IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 9 OF 2007

SHRI. CHANDER MOHAN MEHTA ....Petitioner

Versus

MR. WILLIAM ROSARIO FERNANDES AND ANR ....Respondents

Mr. A. D. Bhobe, Advocate for the Petitioner.

Coram:- N. A. BRITTO, J.

Date:- 15th March, 2007

P.C.:-

Heard Mr. A. D. Bhobe, the learned Counsel on behalf of the Petitioner.

The petitioner is the complainant in C.C.No.114/)A/NI/06/D on the file of the learned J.M.F.C., Vasco da Gama.

The complainant was present before the said Court on 15-12-2006 on which day the accused was absent. The complainant filed his affidavit in evidence and Advocate Salkar who was present on behalf of the accused chose not to cross-examine the complainant and this is presumably because Advocate Prabhudessai who was otherwise appearing for the said accused was not present before the Court. As such, the learned J.M.F.C. recorded nil cross-examination but on the next day on behalf of the accused an application came to be filed to recall the complainant for cross-examination and which has been allowed by the learned J.M.F.C. by Order dated 31-1-2007 by imposing costs on the accused in the sum of Rs.500/-, to be paid to the complainant.

The contention of Mr. Bhobe, the learned Counsel on behalf of the complainant is that the complainant could not have been recalled under Section 311 of the Code of Criminal Procedure, 1973. This contention

cannot be accepted. The power given under Section 311 of the Code is to advance justice and not to defeat it. In my view, this is not a fit case to interfere with in extraordinary jurisdiction. The accused could not have been made to suffer by denying an opportunity to cross-examine the complainant because the Advocate who was otherwise appearing on his behalf was absent before the Court on that day.

Petition dismissed in limine.

N. A. BRITTO, J.

RD.